

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMERICAN EUROPEAN INSURANCE
COMPANY,

Plaintiff,

ORDER

21-CV-725 (MKB) (PK)

v.

TRI STATE PLUMBING & HEATING INC.,
YONG CHEN, ANITA BHOLA, and DOMINGO
JEREZ,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff American European Insurance Company (“AEIC”) commenced the above-captioned action against Defendants Tri State Plumbing & Heating Inc. (“Tri State”), Yong Chen, Anita Bhola, and Domingo Jerez (collectively, “Defendants”) on February 10, 2021, seeking a declaratory judgment that it does not have a duty to defend or indemnify any party in connection with an underlying action filed by Jerez against Tri State, Chen, and Bhola in New York Supreme Court, County of Kings (“the Underlying Action”). (Compl., Docket Entry No. 1.) Defendants failed to appear or otherwise defend the action, and the Clerk of Court entered default against them on April 7, 2021. (Clerk’s Entry of Default, Docket Entry No. 12.) Plaintiff first filed a motion for default judgment on April 8, 2021, (Docket Entry No. 13), but erroneously served it on Tri State at 30-70 Prince Street #107, Flushing, NY 11354, (*see* Order dated Dec. 3, 2021). The Court referred Plaintiff’s motion to Magistrate Judge Peggy Kuo for a report and recommendation. (Order dated June 16, 2021.) Plaintiff was granted leave to refile for default judgment and serve Tri State at 33-70 Prince Street, Suite 706, Flushing, NY 11354,

the address listed on Plaintiff's supporting documents and Tri State's corporate website. (Pl.'s Mot. for Leave to File, Docket Entry No. 15; Order dated Dec. 7, 2021.) On December 8, 2021, Plaintiff moved again for default judgment. (Pl.'s Mot. for Default J., Docket Entry No. 16.)

By report and recommendation dated September 15, 2022, Judge Kuo recommended that the Court grant Plaintiff's motion for default judgment and enter a judgment declaring that Plaintiff does not have a duty to defend or indemnify Defendants as to any of the claims asserted in the Underlying Action (the "R&R"). (R&R 13, Docket Entry No. 18.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App'x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) ("Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and

then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

The Court adopts the R&R, grants Plaintiff’s motion for a default judgment, and declares that Plaintiff does not have a duty to defend or indemnify Defendants as to any of the claims asserted in the Underlying Action. Plaintiff is directed to serve copies of this Order upon Defendants at their last known addresses and to file proof of service with the Court. The Clerk of Court is respectfully directed to close this case.

Dated: September 30, 2022
Brooklyn, New York

SO ORDERED:

/s/ MKB
MARGO K. BRODIE
United States District Judge